

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 256

Introduced By: Aguilar, 35

Read first time: January 10, 2007

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to state government; to amend sections
2 72-803, 72-818, 73-508, 81-154, 81-161.03, 81-8,239.01,
3 81-8,239.03, 81-8,239.04, 81-8,239.05, 81-8,239.07, and
4 83-916, Reissue Revised Statutes of Nebraska, and section
5 81-8,239.02, Revised Statutes Cumulative Supplement, 2006;
6 to change bidding and contract requirements as prescribed;
7 to require submission of a request for a utility easement;
8 to raise dollar thresholds for requisitions and purchases;
9 to rename a fund; to create a fund and provide for its use;
10 to eliminate the Forms Management Program Act; to harmonize
11 provisions; to repeal the original sections; and to outright
12 repeal sections 81-1162, 81-1163, 81-1164, 81-1165, 81-1166,
13 81-1167, 81-1168, 81-1169, and 83-134, Reissue Revised
14 Statutes of Nebraska.

15 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 72-803, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 72-803. (1) The state and any department or agency thereof,
4 subject to the powers of the state building division of the Department
5 of Administrative Services, shall have general charge of the erection
6 of new buildings which are being erected for such department or
7 agency, the repair and improvement of buildings under the control of
8 such department or agency, including fire escapes, and the improvement
9 of grounds under the control of such department or agency.

10 (2) Buildings and other improvements costing more than
11 ~~forty~~ fifty thousand dollars shall be (a) constructed under the
12 general charge of the department or agency as provided in subsection
13 (1) of this section and (b) let by contract to the lowest responsible
14 bidder after proper advertisement as set forth in subsection (4) of
15 this section.

16 (3) The successful bidder at the letting shall enter into a
17 contract with the department or agency, prepared as provided for by
18 subsection (4) of this section, and shall furnish a bond for the
19 faithful performance of his or her contract, except that a performance
20 bond shall not be required for any project which has a total cost of
21 ~~forty~~ one hundred thousand dollars or less unless the department
22 or agency includes a bond requirement in the specifications for the
23 project.

24 (4) When contracts are to be let by the department or agency
25 as provided in subsection (2) of this section, advertisements shall be
26 published in accordance with rules and regulations adopted and
27 promulgated by the state building division stating that sealed

1 proposals will be received by the department or agency at its office
2 on the date therein stated for the furnishing of materials, the
3 construction of buildings, or the making of repairs or improvements
4 and that plans and specifications can be seen at the office of the
5 department or agency. All bids or proposals shall be accompanied by a
6 certified check or by a bid bond in a sum fixed by the department or
7 agency and payable thereto. All such contracts shall be awarded to the
8 lowest responsible bidder, but the right shall be reserved to reject
9 any and all bids. Whenever any material described in any contract can
10 be obtained from any state institution, the department or agency shall
11 exclude it from such a contract. ~~Upon the awarding of the contract or~~
12 ~~contracts therefor, the Attorney General shall review the contract or~~
13 ~~contracts to be entered into by the department or agency and the~~
14 ~~contracting parties.~~

15 Sec. 2. Section 72-818, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 72-818. A state agency ~~may~~ shall submit a any
18 request for granting a utility easement on state-owned land to the
19 committee. The committee may only approve utility easements by
20 majority vote. Utility easements may only be granted to political
21 subdivisions or their contractors for utility or construction-related
22 purposes. The committee shall certify the approval of a utility
23 easement to the Director of Administrative Services who shall execute
24 the instrument necessary to grant the easement. The state building
25 division of the Department of Administrative Services shall be
26 responsible for the implementation of easements granted under this
27 section.

1 Sec. 3. Section 73-508, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 73-508. Except as provided in section 73-507, all proposals
4 for sole source contracts for services in excess of ~~twenty-five~~
5 fifty thousand dollars shall be preapproved by the materiel
6 division except in emergencies. In case of an emergency, contract
7 approval by the state agency director or his or her designee is
8 required. A copy of the contract and agency justification of the
9 emergency shall be provided to the Director of Administrative Services
10 within three business days after contract approval. The state agency
11 shall retain a copy of the justification with the contract in the
12 agency files. The Director of Administrative Services shall maintain a
13 complete record of such sole source contracts for services.

14 Sec. 4. Section 81-154, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 81-154. The materiel division shall establish and maintain
17 standard specifications for personal property purchased in the name of
18 the state. The materiel division shall enlist the cooperation and
19 assistance of the using agencies in the establishment, maintenance,
20 and revision of standard specifications and shall encourage and foster
21 the use of standard specifications in order that the most efficient
22 purchase of personal property may be continuously accomplished. All
23 such standard specifications shall be so drawn that it will be
24 possible for three or more manufacturers, vendors, or suppliers to
25 submit competitive bids. If a requisition for personal property
26 exceeds ~~ten~~ twenty-five thousand dollars and bids cannot be
27 obtained from three bidders, then the standard specifications of the

1 personal property upon which bids are sought shall be reviewed by the
2 materiel division and the using agencies involved. If it is determined
3 by the materiel division, because of the special nature of the
4 personal property sought to be purchased or leased or for any other
5 reason, that the standard specifications should remain as written,
6 bids may be accepted from a fewer number of bidders than three with
7 the approval of the Governor or his or her designated representative.

8 Sec. 5. Section 81-161.03, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 81-161.03. The materiel division may, by written order,
11 permit purchases, contracts, or leases to be made by any using agency
12 directly with the vendor or supplier whenever it appears to the
13 satisfaction of the materiel division that, because of the unique
14 nature of the personal property, the price in connection therewith,
15 the quantity to be purchased, the location of the using agency, the
16 time of the use of the personal property, or any other circumstance,
17 the interests of the state will be served better by purchasing or
18 contracting direct than through the materiel division.

19 Such permission shall be revocable and shall be operative
20 for a period not exceeding twelve months from the date of issue. Using
21 agencies receiving such permission shall report their acts and
22 expenditures under such orders to the materiel division in writing and
23 furnish such agent with proper evidence that competition has been
24 secured at such time and covering such period as may be required by
25 the materiel division.

26 The materiel division shall adopt and promulgate rules and
27 regulations establishing criteria which must be met by any agency

1 seeking direct market purchase authorization. Purchases for
2 miscellaneous needs may be made directly by any agency without prior
3 approval from the materiel division for purchases of less than ~~five~~
4 ten thousand dollars if the agency has completed a certification
5 program as prescribed by the materiel division.

6 The Department of Correctional Services may purchase raw
7 materials, supplies, component parts, and equipment perishables
8 directly for industries established pursuant to section 83-183,
9 whether such purchases are made to fill specific orders or for general
10 inventories. Any such purchase shall not exceed twenty-five thousand
11 dollars. The department shall comply with the bidding process of the
12 materiel division and shall be subject to audit by the materiel
13 division for such purchases.

14 Sec. 6. Section 81-8,239.01, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 81-8,239.01. (1) For purposes of sections 81-8,239.01 to
17 81-8,239.08 and section 7 of this act, unless the context otherwise
18 requires, the definition of state agencies found in section 81-8,210
19 shall apply, except that such term shall not include the Board of
20 Regents of the University of Nebraska.

21 (2) There is hereby established a division within the
22 Department of Administrative Services to be known as the risk
23 management and state claims division. The division shall be headed by
24 the Risk Manager who shall be appointed by the Director of
25 Administrative Services. The division shall be responsible for the
26 Risk Management Program, which program is hereby created. The program
27 shall consist of the systematic identification of exposures to risk of

1 loss as provided in sections 11-201 to 11-203, 13-911, 25-2165,
2 43-1320, 44-1615, 44-1616, 48-194, 48-197, 48-1,103, 48-1,104,
3 48-1,107, 48-1,109, 81-8,212, 81-8,220, 81-8,225, 81-8,226, 81-8,233,
4 81-8,239.01 to 81-8,239.08, and 81-8,300 and section 7 of this act
5 and shall include the appropriate methods for dealing with such
6 exposures in relation to the state budget pursuant to such sections.
7 Such program shall be administered by the Risk Manager and shall
8 include the operations of the State Claims Board and other operations
9 provided in such sections.

10 (3) Under the Risk Management Program, the Risk Manager
11 shall have the authority and responsibility to:

12 (a) Employ any personnel necessary to administer the Risk
13 Management Program;

14 (b) Develop and maintain loss and exposure data on all state
15 property and liability risks;

16 (c) Develop and recommend risk reduction or elimination
17 programs for the state and its agencies and establish, implement, and
18 monitor a statewide safety program;

19 (d) Determine which risk exposures shall be insured and
20 which risk exposures shall be self-insured or assumed by the state;

21 (e) Establish standards for the purchase of necessary
22 insurance coverage or risk management services at the lowest costs,
23 consistent with good underwriting practices and sound risk management
24 techniques;

25 (f) Be the exclusive negotiating and contracting agency to
26 purchase insurance or risk management services and, after consultation
27 with the state agency for which the insurance or services are

1 purchased, enter into such contracts on behalf of the state and its
2 agencies, officials, and employees to the extent deemed necessary and
3 in the best interest of the state, and authorize payment for such
4 purchase out of the appropriate funds created by section 81-8,239.02;

5 (g) Determine whether the state suffered a loss for which
6 self-insured property loss funds have been created and authorize and
7 administer payments for such loss from the State Self-Insured Property
8 Fund for the purpose of replacing or rebuilding state property;

9 (h) Perform all duties assigned to the Risk Manager under
10 the Nebraska Workers' Compensation Act and sections 11-201 to 11-203,
11 81-8,239.05, 81-8,239.07, and 84-1601 to 84-1615 and section 7 of
12 this act;

13 (i) Approve the use of risk management pools by any
14 department, agency, board, bureau, commission, or council of the State
15 of Nebraska; and

16 (j) Recommend to the Legislature such legislation as may be
17 necessary to carry out the purposes of the Risk Management Program and
18 make appropriation requests for the administration of the program and
19 the funding of the separate funds administered by the Risk Manager.

20 (4) No official or employee of any entity created pursuant
21 to the Interlocal Cooperation Act or the Joint Public Agency Act shall
22 be considered a state official or employee for purposes of sections
23 81-8,239.01 to 81-8,239.06.

24 Sec. 7. A state agency head shall file copies of all
25 settlements and a state agency head or the Attorney General shall file
26 copies of all final, nonappealable judgments, of all self-insured
27 liability claims with the Risk Manager. If the state agency has

1 insufficient funds to pay the settlement or judgment, the state
2 agency shall notify the Risk Manager. The Risk Manager shall then
3 submit the settlement or judgment to the Legislature in the same
4 manner as provided in the State Miscellaneous Claims Act. The
5 Legislature shall review the settlement or judgment and make an
6 appropriation if appropriate.

7 Sec. 8. Section 81-8,239.02, Revised Statutes Cumulative
8 Supplement, 2006, is amended to read:

9 81-8,239.02. The following separate permanent revolving
10 funds are established in the state treasury for use under the Risk
11 Management Program according to the purposes for which each fund is
12 established:

13 (1) The State Insurance Fund is hereby created for the
14 purpose of purchasing insurance to cover property, fidelity, and
15 liability risks of the state and workers' compensation claims against
16 the state and other risks to which the state or its agencies,
17 officials, or employees are exposed and for paying related expenses.
18 The fund may receive deposits from assessments against state agencies
19 to provide insurance coverage as directed by the Risk Manager. The
20 Risk Manager may retain in the fund sufficient money to pay for any
21 deductibles, self-insured retentions, or copayments as may be required
22 by such insurance policies;

23 (2) The State Self-Insured Property Fund is hereby created
24 for the purpose of replacing, repairing, or rebuilding state property
25 which has incurred damage or is suffering other loss not fully covered
26 by insurance and for paying related expenses. The fund may receive
27 deposits from assessments against state agencies to provide property

1 coverage as directed by the Risk Manager. The Risk Manager may assess
2 state agencies to provide self-insured property coverage; ~~and~~
3 (3) The State Self-Insured Indemnification ~~and Liability~~
4 Fund is hereby created for the purpose of paying ~~compensable~~
5 ~~liability and fidelity claims against the state or its agencies,~~
6 ~~officials, or employees which are not fully covered by insurance and~~
7 ~~for paying~~ indemnification claims under section 81-8,239.05.
8 Indemnification claims shall include payments for awards,
9 settlements, and associated costs, including appeal bonds and
10 reasonable costs associated with a required appearance before any
11 tribunal. The fund may receive deposits from assessments against state
12 agencies to pay for the costs associated with providing and supporting
13 indemnification claims. The creation of this fund shall not be
14 interpreted as expanding the liability exposure of the state or its
15 agencies, officials, or employees; ~~and -~~

16 (4) The State Self-Insured Liability Fund is hereby created
17 for the purpose of paying compensable liability and fidelity claims
18 against the state or its agencies, officials, or employees which are
19 not fully covered by insurance and for which there is insufficient
20 agency funding and for which a legislative appropriation is made
21 under the provisions of section 7 of this act. The creation of this
22 fund shall not be interpreted as expanding the liability exposure of
23 the state or its agencies, officials, or employees. The Risk Manager
24 shall report all claims and judgments paid from the State
25 Self-Insured Liability Fund to the Clerk of the Legislature annually.
26 The report shall include the name of the claimant, the amount claimed
27 and paid, and a brief description of the claim, including any agency,

1 program, and activity under which the claim arose. Any member of the
2 Legislature may receive a copy of the report by making a request to
3 the Risk Manager.

4 Sec. 9. Section 81-8,239.03, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 81-8,239.03. The Risk Manager shall present a budget request
7 as provided in section 81-1113 for the Risk Management Program which
8 shall separately state the amount requested for the Tort Claims Fund,
9 State Insurance Fund, State Self-Insured Property Fund, State
10 Self-Insured Indemnification ~~and Liability~~ Fund, and Workers'
11 Compensation Claims Revolving Fund, and such budget shall be based on
12 the projected needs for such funds. If the Risk Manager does not
13 assess state agencies for any of the funds listed in this section, the
14 amount of expenditures paid from the fund on behalf of any
15 non-general-fund agency shall be separately stated and paid into the
16 funds from an appropriation to such non-general-fund agency. If the
17 amount of money in any of such funds is not sufficient to pay any
18 awards or judgments authorized by sections 48-192 to 48-1,109 or the
19 State Tort Claims Act, the Risk Manager shall immediately advise the
20 Legislature and request an emergency appropriation to satisfy such
21 awards and judgments. Any money in such funds available for investment
22 shall be invested by the state investment officer pursuant to the
23 Nebraska Capital Expansion Act and the Nebraska State Funds Investment
24 Act.

25 Sec. 10. Section 81-8,239.04, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 81-8,239.04. All money or property recovered by or returned

1 to the state, including but not limited to dividends, money recovered
2 pursuant to litigation, or the salvage value of damaged property for
3 damages relating to either a liability or property loss for which
4 money from the State Insurance Fund, State Self-Insured Property Fund,
5 State Self-Insured Indemnification ~~and Liability~~ Fund, State
6 Self-Insured Liability Fund, Workers' Compensation Claims Revolving
7 Fund, or Tort Claims Fund has been paid, shall be deposited in the
8 respective fund, except that such money or property recovered under
9 the terms of an insurance policy, the premiums for which were paid
10 solely by a cash fund agency and purchased at its request, shall be
11 deposited in the respective cash fund.

12 Sec. 11. Section 81-8,239.05, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 81-8,239.05. (1) The State of Nebraska shall indemnify its
15 officials and employees and its past officials and employees for money
16 damages and reasonable costs incurred as a result of an act or
17 omission occurring in the course and scope of employment of such
18 official or employee after May 22, 1981. Such official's or employee's
19 right to indemnification shall include the payments of awards,
20 settlements, and associated costs, including appeal bonds and
21 reasonable costs associated with a required appearance before any
22 tribunal.

23 (2) Subsection (1) of this section shall not apply in case
24 of malfeasance in office or willful or wanton neglect of duty. This
25 section shall not be interpreted as an expansion of any state
26 official's or employee's personal liability.

27 (3) The Attorney General shall notify the Risk Manager when

1 an official or employee is being represented by the Attorney General
2 or has engaged competent counsel approved by the Attorney General. The
3 reasonable costs of litigation, including appeal bonds, or the
4 reasonable costs of any appearance before any tribunal shall be paid
5 by the Risk Manager from the State Self-Insured Indemnification ~~and~~
6 ~~Liability~~ Fund.

7 (4) The Attorney General shall file copies of all awards and
8 settlements and any final court approval with the Risk Manager and
9 shall request that the Risk Manager make the required payments, if
10 funds are available, from the State Self-Insured Indemnification ~~and~~
11 ~~Liability~~ Fund, except that any portion of an award or settlement
12 which is for punitive damages may only be paid with the approval of
13 the Legislature. The official or employee may file a claim under the
14 State Miscellaneous Claims Act if payment is not made.

15 (5) The Risk Manager shall report all claims and judgments
16 paid from the State Self-Insured Indemnification ~~and Liability~~ Fund
17 to the Clerk of the Legislature annually. The report shall include the
18 name of the claimant, the amount claimed and paid, and a brief
19 description of the claim, including any agency, program, and activity
20 under which the claim arose. Any member of the Legislature may receive
21 a copy of the report by making a request to the Risk Manager.

22 Sec. 12. Section 81-8,239.07, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 81-8,239.07. The Risk Manager, acting as agent for the state
25 agencies as defined in section 81-8,239.01, may (1) self-insure and
26 contract for related risk management services, (2) purchase a
27 liability insurance policy or policies, or (3) use any combination of

1 self-insurance and insurance to protect the agencies and their
2 employees and other persons authorized to operate a vehicle by an
3 agency against loss occasioned by negligence in the operation of any
4 trucks, automobiles, snowplows, road graders, or other vehicles. Any
5 such policy shall be purchased by public bidding conducted by the Risk
6 Manager upon terms and forms prepared by him or her and shall ~~be in a~~
7 ~~limit of not less than fifty thousand dollars to cover the death or~~
8 ~~bodily injury or injuries of one person and, subject to the~~
9 ~~limitation to one person, one hundred thousand dollars to cover death~~
10 ~~or bodily injury or injuries to more than one person in the same~~
11 ~~accident and ten thousand dollars to cover property damage. have~~
12 ~~limits for death, bodily injury, and property damage that are the~~
13 ~~same as would be required by law for a private individual.~~ The
14 premium on the policy or policies shall be paid by the Risk Manager
15 from the State Insurance Fund created in section 81-8,239.02. The Risk
16 Manager shall authorize and administer the payment of self-insured
17 losses and payment for risk management services from the State
18 Insurance Fund, State Self-Insured Property Fund, ~~or~~ State
19 Self-Insured Indemnification ~~and Liability~~ Fund, or State
20 Self-Insured Liability Fund as appropriate.

21 Sec. 13. Section 83-916, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 83-916. (1) The Department of Correctional Services shall
24 have general charge of the erection of new buildings, the repair and
25 improvement of buildings, including fire escapes, and the improvement
26 of grounds.

27 (2) Buildings and other improvements costing more than

1 ~~forty~~ fifty thousand dollars, exclusive of equipment not germane
2 to construction and building material made in the institution, shall
3 be (a) constructed under the general charge of the department as
4 provided in subsection (1) of this section and (b) let by contract to
5 the lowest responsible bidder after proper advertisement as set forth
6 in subsection (5) of this section, except that buildings costing more
7 than ~~forty~~ fifty thousand dollars, such as shops, warehouses, or a
8 cannery, when declared necessary by the department and to be
9 constructed on the grounds of any Department of Correctional Services
10 adult correctional facility, may be constructed by the use of inmate
11 labor. Any construction by inmate labor shall have the approval of the
12 department, the warden, and the chief engineer of the department.

13 (3) Inmate labor or the labor of state charges shall be
14 employed, whenever the department deems it practicable, in all
15 construction, repairs, and improvements at state institutions.

16 (4) The successful bidder at the letting referred to in
17 subsection (2) of this section shall enter into a formal contract with
18 the department, prepared as provided for by subsection (5) of this
19 section, and shall furnish a bond for the faithful performance of his
20 or her contract, except that a performance bond shall not be required
21 for any project which has a total cost of ~~forty~~ one hundred
22 thousand dollars or less unless the department includes a bond
23 requirement in the specifications for the project.

24 (5) When contracts are to be let by the department as
25 provided for by subsection (2) of this section, advertisements shall
26 be published in accordance with rules and regulations adopted and
27 promulgated by the state building division of the Department of

1 Administrative Services stating that sealed proposals will be received
2 by the Department of Correctional Services at its office on the date
3 therein stated for the furnishing of materials, the construction of
4 buildings, or the making of repairs or improvements and that plans and
5 specifications can be seen at the office of the department. All bids
6 or proposals shall be accompanied by a certified check or bid bond in
7 a sum fixed by the department and payable thereto. All such contracts
8 shall be awarded to the lowest responsible bidder, but the right shall
9 be reserved to reject any and all bids. Whenever any material
10 described in any contract can be obtained from any state institution,
11 the department shall exclude it from such a contract. ~~Upon the~~
12 ~~awarding of the contract or contracts therefor, the Attorney General~~
13 ~~shall review the contract or contracts to be entered into by the~~
14 ~~department and the contracting parties.~~

15 Sec. 14. Original sections 72-803, 72-818, 73-508, 81-154,
16 81-161.03, 81-8,239.01, 81-8,239.03, 81-8,239.04, 81-8,239.05,
17 81-8,239.07, and 83-916, Reissue Revised Statutes of Nebraska, and
18 section 81-8,239.02, Revised Statutes Cumulative Supplement, 2006, are
19 repealed.

20 Sec. 15. The following sections are outright repealed:
21 Sections 81-1162, 81-1163, 81-1164, 81-1165, 81-1166, 81-1167,
22 81-1168, 81-1169, and 83-134, Reissue Revised Statutes of Nebraska.